

CHAPTER IX

UNRUH

C. The Law: Sources of the Legal Standards for Unruh Act Cases

1. Statute and Regulations

FEHA (Government Code) Sections 12948 and 12955(d)

Unruh Civil Rights Act (Civil Code) Sections 51, 51.2, 51.3, 51.4, 52 (Remedy).

2. Precedential Decisions

DFEH v. Carefree Ranch Mobile Home Park, A California Limited Partnership, Lester Frame, General Partner, Henry and Laura Straub, Managers, Ernest Morrison as Trustee Under Trust Agreement Dated June 23, 1975, Enid Peterson, William A. Rooke and Hannelore Rooke Revocable Trust No. 1, William M. Keck, Jr., Muriel Hecsh, Zelma I. Mayes, Trustee of the Zelma I. Mayes Trust, A. Douglas Mayes, Limited Partners (Munoz, Munoz, Jr.) FEHC Dec. No. 84-31. Age (under 30 years) - refusal to rent park space. Unruh Act not limited to enumerated bases; Unruh Act prohibits all arbitrary discrimination in business establishments of any kind. FEHC has jurisdiction over age discrimination in housing; blanket exclusions of whole age groups on basis of unfounded assumptions violates the Unruh Act. (NOTE: In March, 1989, the California Supreme Court held that mobile home parks were exempt from the age discrimination provisions of the Unruh Civil Rights Act. See below, non-Commission cases, Schmidt v. Superior Court (Valley Mobile Home Park Investments)).

DFEH v. Children's Hospital and Health Center (Gilman) FEHC Dec. No. 87-24. Sex (male) - failure to hire (physician in a child sexual abuse program). Unruh Act does not cover employment discrimination against independent contractors. Legal standard for evaluating independent contractor status.

DFEH v. Merribrook Apartments, James C. Beard, Owner, dba Beard Development Company and Beard and Hoshaw Investment Builders; Robert J. Hoshaw, Owner, dba Beard Development Company and Beard and Hoshaw Investment Builders; Ellen Reiley, Manager; Kay Smittle, Property Manager; Beard and Hoshaw Company, Inc.; and Beard Development Company (M. Tolmasov, D. Tolmasov, C. Tolmasov) FEHC Dec. No. 88-19. Age (minor child) - rent denial (two-bedroom apartment). Respondent maintained occupancy policy of one person per bedroom. Legal standard for establishing intentional discrimination under Unruh Act: preponderance of evidence shows that protected basis is "a factor" in the adverse action. FEHC incorporated doctrine of adverse impact as part of FEHA's prohibition of housing discrimination. Legal standard for prevailing on adverse impact affirmative defense: 1) practice serves a compelling and well-established public purpose, and 2) there exists no reasonable alternative to serving the same need with less discriminatory impact. (BUT NOTE: In Harris v. Capital Growth Investors, 52 Cal.3d 1142 (1992), the California Supreme Court held that adverse impact analysis may not be used to show a violation

of the Unruh Act. The Unruh Act prohibits intentional discrimination only. See below, non-Commission cases.)

DFEH v. Hallmark Realtors, Robert Dinkins and Charles Thomas (Esqueda) FEHC Precedential Order 91-A. National origin (Mexico) - statements of preference. Pursuant to Government Code Section 12948, DFEH housing discrimination complaints may be filed under the one-year statute of limitations of the Unruh Civil Rights Act. The FEHC rejected the respondent's argument that the sixty-day filing statute of limitations of Government Code Section 12955 controlled all DFEH housing discrimination complaints. (This FEHC Order considered the jurisdiction argument only; case remanded to the Administrative Law Judge for hearing on issues of fact.)

3. Non-Commission Cases

In Re Cox (1970) 3 Cal.3d 205, 212. Enumerated bases in Unruh are illustrative rather than restrictive. Though a business enterprise may establish reasonable department regulations, they must be rationally related to the services performed and the facilities provided (individual forced to leave a shopping center for associating with a friend who had long hair and unconventional dress, i.e., "offensive personal conduct").

Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d. 721. Landlord's blanket exclusion of children from residency is prohibited by Unruh Act; exclusion may not be justified by generalized prediction that class of children "as a whole" is rowdier than adults. Age restrictions are permitted if justified by a compelling societal need such as senior citizen housing.

O'Connor v. Village Green Owners Association (1983) 33 Cal.3d 790. Condominium associations are "business establishments" subject to the provisions of the Unruh Act; exclusion of children as a class is unlawful (condominium association tried to evict residents with a child asserting that CCRs limited residency to adults only).

Schmidt v. Superior Court (Valley Mobile Home Park Investments) (1989) 48 Cal.3d 370. Age (23) - failure to rent park space due to residency rule limiting tenancy to adults over age 25. California Supreme Court held: 1) Mobile home parks may restrict residency to adults, pursuant to Civil Code Section 798.76, Mobile Home Residency Act; 2) park could maintain rule excluding residents under age 25 (the California Supreme Court reaffirmed this part of its ruling in a March 30, 1989 hearing, and found that mobile home parks are exempt from the Unruh Civil Rights Act. The Supreme Court held that the California Mobile Home Residency Act may be interpreted to allow distinctions based on age between classes of adults).

Sunrise Country Club Association, Inc. v. Proud (1987) 190 Cal.App.3d 377. Court of Appeal held that a large condominium complex may be divided into a family section which permitted children and an adult section which prohibited children. Court held that there was no violation of the Unruh Civil Rights Act because the Sunrise policy reasonably accommodated children within the entire condominium complex.

Harris v. Capital Growth Investors XIV, 52 Cal.3d 1142 (1991). Sex (female) and level of income (low income individuals on AFDC) - rent denial. The California Supreme Court held: 1) The respondent's minimum income requirement (three times the monthly rent) was not arbitrary discrimination prohibited by the Unruh Civil Rights Act. Economic characteristics are not protected categories under the Unruh Act. 2) Adverse impact analysis may not be used to show a violation of Unruh, the Act only prohibits intentional discrimination.

APPENDIX A

UNRUH CIVIL RIGHTS ACT: OVERVIEW

STATUTORY AUTHORITY:

- Civil Code Sections 51, 51.2, 51.3, 51.4, 52
- Government Code Section 12948

COVERAGE:

Prohibits arbitrary discrimination by business establishments based on:

- Race
- Color
- Religion
- Sex
- Ancestry
- National Origin
- Blindness
- Physical Disability - specifically exempts business establishments from structural accommodation requirements
- Age/Children
- Any arbitrary discrimination based on personal characteristics (excludes mental disability)

Prohibits intentional discrimination only.

SENIOR CITIZEN HOUSING:

Exception to the age discrimination provisions which prohibit discrimination against children

- Qualifying Requirements:

Facility must restrict occupants to persons age 62 or older;

OR

Facility is a senior citizen housing development and restricts occupancy to persons 55 or older and also:

- ◆ Has 150 units in a Standard Metropolitan Statistical Area (SMSA) or 35 units in other areas; and
- ◆ Is "developed for, or substantially rehabilitated, or renovated" to meet the physical and social needs of seniors (i.e., senior design requirements).

- Characteristics of Senior Design Requirements:

Handrails, ramps, recreational facilities, wide sidewalks, specialized transportation, medical services, large bathrooms, provision for common rooms, etc.

➤ Exceptions to Senior AGE Requirements:

- ◆ A person who is at least 45 years of age or is under the age of 45 and is a spouse, cohabitant, or person providing primary economic support may reside with a senior as a "qualified permanent resident" if the person:

1. Resided with a senior prior to the death, hospitalization, prolonged absence, or dissolution of marriage;

AND

2. Has an ownership interest or expectation of having an ownership interest, in the dwelling unit.

- ◆ A non-senior "qualified permanent resident" is entitled to continue his/her residency in the event of death, dissolution of marriage, hospitalization, or the prolonged absence of the senior resident.
- ◆ A non-senior "permitted health care resident" may reside with a senior if hired to provide live-in, long-term, or terminal health care.
- ◆ Any non-senior resident may continue to reside in senior complexes provided they were residents prior to January 1, 1985.
- ◆ Any non-senior resident may continue to reside in "senior citizen housing developments" exempt from the senior design requirements per Civil Code Section 51.4, provided they were residents as of January 1, 1990.

➤ Exceptions to Senior DESIGN Requirements:

Senior housing developments (age 55 and over) are exempt from senior design requirements until January 1, 2000 if they:

- ◆ Were constructed prior to February 8, 1982;
- ◆ Can show that it is not practical to meet senior design requirements in the areas in which they are located;
- ◆ Can show that the housing development is necessary to provide housing opportunities to seniors.

MOBILE HOME PARKS:

Mobilehome Residency Act (Civil Code Section 798.76) permits parks to establish "adults only" facilities (18 years of age or older)

FILING REQUIREMENTS:

- With DFEH: File within one year of discriminatory act
- Civil Court Suit By Individual: File lawsuit within three years (no prerequisite of filing first with DFEH)

REMEDIES:

➤ DFEH/FEHC

- ◆ Injunctive and equitable relief
- ◆ A legal question exists as to monetary damages

➤ Court

- ◆ Actual damages
- ◆ Punitive damages up to three times actuals
- ◆ Injunctive and equitable relief
- ◆ Attorney's fees